

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

MICHAEL E. SPREADBURY,

CV 11-64-M-DWM-JCL

Plaintiff,

ORDER

vs.

BITTERROOT PUBLIC LIBRARY,
CITY OF HAMILTON,
LEE ENTERPRISES, INC.,
BOONE KARLBERG, P.C.,
DR. ROBERT BROPHY, TRISTA SMITH,
NANSU RODDY, JERRY STEELE,
STEVE SNAVELY, STEVEN BRUNER-MURPHY,
RYAN OSTER, KENNETH S. BELL, and JENNIFER LINT,

Defendants.

Before the Court is Plaintiff Michael Spreadbury's motion requesting the Court to enter an order, under Federal Rules of Civil Procedure 36(a)(6) and 37(a), to compel a further response from Defendant Lee Enterprises, Inc., to certain discovery requests. As best as can be ascertained from Spreadbury's motion, the discovery requests in dispute are: (1) Request for Admission No. 1; (2) Request for Admission No. 4; and (3) Request for Production No. 3.

A. Request for Admission No. 1

Request for Admission No. 1 reads as follows:

Please admit reporter, photographer sent to cover Plaintiff summons for trespassing at Bitterroot Public Library by Defendant Perry Backus, former editor Defendant Ravalli Republic Hamilton Municipal Court September 9, 2009.

Lee interposed an objection stating the request is “unintelligible and therefore Lee is unable to answer the Request for Admission and denies the same.” Dkt. 238-1, at 7.

A request for admission is objectionable if the request is so vague or ambiguous that the responding party cannot answer it. *See e.g. Erie Ins. Property and Casualty Co. v. Johnson*, 272 F.R.D. 177, 185 (S.D.W.Va. 2010). The responding party must, however, when good faith requires, qualify an answer or deny only a part of the matter. Fed. R. Civ. P. 36(a)(4). Implicit in this requirement is the notion that the responding party must read the request in the context of the case and in light of the information known to that party.

That being said, it is important to note that the response to Request for Admission No. 1 was served on January 31, 2012 – a point in time prior to Lee being granted summary judgment upon some of Spreadbury’s defamation claims. At present, the sole claim remaining against Lee is Spreadbury’s claim of defamation per se based upon an August 9, 2010, article published in the Ravalli Public – a newspaper owned by Lee – that erroneously reported Spreadbury had

been convicted of the criminal offense of disturbing the peace. *See* Dkt. 249, at 6-10. The admission sought by way of Request for Admission No. 1 is not relevant to the remaining claim. If the Court were to address the parties' dispute regarding Request for Admission No. 1, as framed, it would be impermissibly issuing an advisory opinion. Therefore, this aspect of Spreadbury's motion is properly denied.

B. Request for Admission No. 4

Spreadbury's Request for Admission No. 4 reads:

Please admit Defendant Lee Enterprises Inc. is a publisher of newspapers and its proprietary websites such as www.ravallirepublic.com, www.missoulain.com, and www.billingsgazette.com inter alia are owned by Defendant Lee Enterprises.

Lee provided a qualified response to this compound request, admitting that it is the owner and publisher of newspapers including the Ravalli Republic, the Missoulain, and the Billings Gazette. But Lee objected on grounds of relevancy to making a similar admission regarding the referenced websites based on the undersigned's recommendation (Dkt. 181) that Lee be granted summary judgment on Spreadbury's claim that Lee is liable for on-line comments made on the websites by third parties – a recommendation that was adopted by the presiding district judge. Dkt. 249, at 3-5.

As noted, the only remaining claim Spreadbury has against Lee is his claim for defamation per se grounded upon the August 9, 2010, article published in the Ravalli Republic. Review of the record reflects that articles published in the hard copy of the Ravalli Republic are routinely published on the paper's website, as well as on the websites of other newspapers owned by Lee. The determination of whether Lee owns the referenced websites bears on the issue of how widely the August 9, 2010, article was disseminated – a fact which could conceivably prove relevant to the issue of damages. Consequently, the Court is constrained to conclude that Request for Admission No. 4 is “reasonably calculated to lead to the discovery of admissible evidence.” Fed. R. Civ. P. 26(b)(1). Therefore, this aspect of Spreadbury's motion is granted and Lee shall serve a further response to Request for Admission No. 4 on or before March 23, 2012.

C. Request for Production No. 3

Spreadbury's Request for Production No. 3 states:

Produce list of any internet service customers in the State of Montana or elsewhere that gain access and internet services provided by Defendant Lee in accordance with the Communications Decency Act.

Lee interposes objections that the request is “overbroad and unduly burdensome” and seeks irrelevant information. Lee does respond that it does not have such a list in its possession. The Court finds that the request is unduly

burdensome, especially in light of the fact that Lee does not have such a list in its possession. Spreadbury offers no persuasive argument to the contrary. Therefore, this aspect of Spreadbury's motion is denied.

IT IS SO ORDERED.

DATED this 13th day of March, 2012

/s/ Jeremiah C. Lynch
Jeremiah C. Lynch
United States Magistrate Judge